IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 677 of 2007

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANDYA BHIKHBHAI MANILAL & 3 - Petitioner(s)
Versus
STATE OF GUJARAT THR' SECRETARY & 6 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner(s)
MR JK SHAH, AGP for Respondent(s) : 1 to 5 & 7
MR MI MERCHANT for Respondent(s) : 6

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 20/04/2007

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. By filing the instant petition under Article 226 of the Constitution, the petitioners have prayed to set aside the proceedings initiated by the State Government to acquire the land bearing Survey No.929 of Village: Vanch, Taluka: Dascroi, District: Ahmedabad, for the public purpose of construction of Dascroi Branch tail distributory called Gatrad-Vanch Minor under the Narmada Project. The petitioners have further prayed to direct the State Government to alter the position of Dascroi Branch tail distributory so as not to affect Survey No.929 of Village: Vanch, Taluka: Dascroi, District: Ahmedabad, and the public road on which it is abutting so that the petitioners can have approach to Modeshwari Rice Mills which is constructed by them on the land bearing Survey No.929 of Village: Vanch. In the alternative, the petitioners have prayed to direct the Governmental authorities to provide

alternative public way so that they can have access to Modeshwari Rice Mills situated on Survey No.929 of Village: Vanch.

2. The petitioners are the owners of land bearing Survey No.929 of Village: Vanch, Taluka: Dascroi, District: Ahmedabad. According to them, they were desirous of using the land for industrial purpose. Therefore, they applied for necessary permission under Section 65 of the Bombay Land Revenue Code, 1879. It is the case of the petitioners that the permission, as prayed for, was granted and they have put up a Rice Mill known as Modeshwari Rice Mills on Survey No.929 of Village: Vanch. According to the petitioners, it was proposed to acquire Survey No.929 for the purpose of laying tail distributory canal called Gatrad-Vanch Minor, and therefore, necessary proposal was forwarded to the State Government. The petitioners have claimed that originally, the tail distributory was not to be laid through

Survey No.929 but was to be laid through other survey numbers but for the reasons best known to the respondent-authorities, some change was made in the location of the distributory and it was decided to lay the said distributory through Survey No.929 of the petitioners, which is illegal. The grievance made by the petitioners is that due to the proposed acquisition, the Rice Mill of the petitioners would be required to be closed down because the public way on which the Rice Mills is abutting is itself being utilized for the purpose of construction of canal and there is no alternative way available for going to the petitioners' Rice Mills. It is averred by the petitioners that heavy vehicles and tractors are required to go in and out of the Rice Mills but if the canal is laid as proposed, no space would be left out for loading and unloading of the tractors and trucks which will result in closure of the Rice Mills. The petitioners have mentioned that a representation dated

May 19, 2006, was made to the respondent-authorities with a request to lay canal at a distance away from Survey No.929 so that the petitioners may not suffer huge loss of their property and business but the said representation is not considered by the respondents at all. Under the circumstances, the petitioners have filed the instant petition and claimed reliefs to which reference is made earlier.

3. On service of notice, Mr.Manojkumar Haridatt Gajre, Special Land Acquisition Officer, Narmada Unit No.10, having his office at Block No.C/3, 2nd Floor, Narmada Vasahat, Ahmedabad, has filed affidavit-in-reply controverting the averments made in the petition. It is mentioned in the said reply that the alignment of Gatrad-Vanch Minor was decided and approved by the competent authority after considering its technical feasibility and thereafter acquisition proceedings were initiated. What is mentioned

in the reply is that Notification under Section 4 of the Land Acquisition Act, 1894 (“the Act” for short) was issued which was published in the official gazette on September 1, 2006, after which, necessary inquiry under Section 5 of the Act was made. It is pointed out that on the basis of the report submitted by the Special Land Acquisition Officer under Section 5A(2) of the Act, a declaration under Section 6 of the Act was made which was published in the official gazette on January 7, 2006, and thereafter, notices under Section 9 of the Act were issued to the interested persons for the purpose of determining the market value of the lands acquired. What is mentioned in the reply is that the approved alignment was never changed at any time and that there is no Government land for public way between Survey Nos.929 and 846. According to Mr.Manojkumar Haridatt Gajre, the petitioners were using way from Survey No.846 to reach their Survey No.929 at the time when it was

proposed to acquire Survey No.929 and as the petitioners have right of easement of way through Survey No.846, which is not going to be disturbed because of the proposed acquisition, the instant petition should not be entertained. It is mentioned in the reply that necessary canal crossing also will be provided as per the norms and therefore, the contention of the petitioners that they have no other alternative way for going to their Rice Mills being not correct should not be accepted by the Court. It is further stated in the reply that on receipt of representation dated May 19, 2006, for changing the alignment of the canal, a site visit was carried out on June 19, 2006, in the presence of the petitioners, where it was explained to them that there is no alternative technically feasible alignment available. It is stated in the reply that the turning of alignment of canal in Survey No.846 is not possible as per the demand made by the petitioners and as the petition

involves disputed questions of fact, the same should not be entertained.

4. The petitioner No.3, i.e. Mr.Dharmendrakumar G.Pandya, has filed affidavit-in-rejoinder reiterating what is stated in the petition. In the rejoinder, what is highlighted is that the land proposed to be acquired is situated between Survey No.929 and 846 which means that the said land is the land of public way and therefore, the petitioners are entitled to the reliefs claimed in the petition. It is also mentioned in the rejoinder that the respondent No.2 has not placed on record, any particulars to show as to how and why demand for changing the alignment made by the petitioners cannot be considered and therefore, the claim of the petitioners should be accepted.

5. Mr.Gaurav Nanubhai Shah, Executive Engineer, Narmada Project Canal Division No.3, Dehgam, has filed affidavit-in-reply on behalf of the respondent No.5 controverting the averments

made in the petition. It is mentioned in the said reply that the alignment of Gatrad-Vanch Minor was decided and approved by the competent authority vide letter dated December 15, 2001, after considering its technical feasibility and viability, after which, the acquisition proceedings were initiated. In the reply, it is stated that no objections against the Notification published under Section 4 of the Act were received within the time specified therein and that the approved alignment was not changed at any point of time. After referring to the list of survey numbers mentioned by the petitioners in Annexure-C to the petition, it is stated that the list of those survey numbers is not relevant in view of the approved alignment nor there is any Government land for public way between Survey Nos.929 and 846. The deponent of the said affidavit has produced the map showing PETA-MARG between two survey numbers, i.e. Survey Nos.929 and 846 to emphasize that the petitioners are using way

from Survey No.846 to reach their Survey No.929. What is mentioned in the said rely is that by the proposed acquisition, easement right of the petitioners to go to their Survey No.929 through Survey No.846 will not be affected and therefore, the contention of the petitioners that they have no other alternative way for going to their Rice Mills should not be accepted by the Court. It is further stated in the reply that there is a road crossing on asphalt road of village Vanch which is just 90 meters upstream of Survey No.929, and therefore, as per Resolution No.DTP-1999-61-3/Part-28/I dated February 9, 2000, the minimum portion of the land for canal is proposed to be used. It is also mentioned in the reply that the turning of alignment of canal in Survey No.846 is not possible as demanded by the petitioners. While dealing with the contention raised by the petitioners that their access to their Rice Mills would be closed if the proposed acquisition is permitted to go on, it is

stated in the reply that the petitioners are having access to their Survey No.929 through Survey No.846 and therefore, the reliefs claimed in the petition should not be granted.

6. Mahant Rameshwardasji Guru Ram Harshdasji, who is the sole trustee of the respondent No.6-Trust, has filed his reply stating interalia that just adjoining to the property of the petitioners bearing Survey No.931, there is a property bearing Survey No.930 and the petitioners have access to their property bearing Survey No.929 through Survey No.930. During the course of hearing of the petition, the learned counsel for the respondent No.6 has pointed out to the Court that the correct survey number is 929 and not 931, as stated in the said affidavit. What is stated in the reply is that the petitioners have also other alternative access to their property from the village and therefore, the petition should not be entertained.

7. The petitioner No.3 has filed further affidavit-in-rejoinder reiterating what is stated in the petition and denying what is stated by the respondents in their respective affidavits-in-reply. By filing the affidavit-in-rejoinder on behalf of the petitioners, it is mentioned that the petitioners and other people coming to the Rice Mills of the petitioners in Survey No.929 have been using the public way since several decades and if according to the respondents, said public way is being used by way of an easement right through Survey No.846, the same should be so declared in the interest of justice.

8. Mr.Pravinbhai Gandabhai Patel, who is Talati-cum-Mantri of village Vanch, has filed affidavit-in-reply on behalf of the respondent No.7. What is mentioned in paragraph-6 of the reply is that there is no public way / road in between Survey Nos.929 and 846 but one PETA-MARG i.e. GAADA-MARG

admeasuring 0.32 Gunthas is passing through Survey No.846 which belongs to Gau Sewa Trust, Vanch, i.e. the respondent No.6 and that the said PETA-MARG will be available even after construction of canal.

9. This Court has heard the learned counsels for the parties at length and in great detail. This Court has also considered the documents forming part of the petition.

10. From the record of the case, it is evident that no reliable evidence could be produced by the petitioners before this Court to establish that a public way / road was / is available to them for the purpose of going to their Survey No.929. The record produced by Mr.Pravinbhai Gandabhai Patel, Talati-cum-Mantri, Village: Vanch, would indicate that there is some PETA-MARG in Survey No.846 belonging to the respondent No.6. This is quite evident from the documents produced at page 99 and 105 of the compilation. As the petitioners have failed to establish that

there was a public road/ way available to them for the purpose of going to their Rice Mills, the instant petition is liable to be dismissed. The plea that this Court should declare that the petitioners have easementary right through Survey No.846 for the purpose of going to their Survey No.929 cannot be entertained in the instant petition which is filed under Article 226 of the Constitution, more particularly when existence of such a right is disputed by the respondent No.6. As pointed out by the respondent No.6 in its reply, just adjoining to the property of the petitioners bearing Survey No.929, there is another property bearing Survey No.930 belonging to the petitioners and that the petitioners have access to their property bearing Survey No.929 through Survey No.930. The record further shows that the petitioners have other alternative access to their property from the village also. In view of the highly disputed questions of facts, this Court is of the opinion that the instant

petition cannot be entertained and is liable to be dismissed. However, it is clarified that it would be open to the petitioners to institute proceedings before the appropriate forum for appropriate reliefs.

11. For the foregoing reasons, the petition fails and is dismissed. Notice is discharged. There shall be no orders as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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